IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LAWRENCE E. FELDMAN, d/b/a/ LAWRENCE E. FELDMAN and ASSOCIATES,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO. 06-cv-2540
GOOGLE, INC.,	:	
Defendant.	:	

DEFENDANT GOOGLE, INC.'S,
SUPPLEMENTAL MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS AMENDED COMPLAINT

Google submits this supplemental information at the request of the Court. *See* Order dated November 2, 2006. At the November 1 hearing, the Court asked Google to submit an affidavit describing how plaintiff Feldman assented to the Google AdWords contract. The attached declaration from Google representative Annie Hsu demonstrates that, if Feldman in fact advertised through the AdWords program, then Google presented him with the AdWords contract—and he was required to click a button indicating that he agreed to the contract—*before* he placed any ads or incurred any charges. Specifically, Ms. Hsu's declaration establishes that:

- Advertisers must create an active AdWords account in order to place an ad. *See* Hsu Declaration, attached hereto as Exhibit B, ¶¶ 6-7.
- Before an advertiser can create an active account, Google presents the advertiser with the AdWords contract. *Id.* at ¶ 4.

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- Google ensures that the contract is short and easy to read. The version that Feldman alleges he assented to is just seven paragraphs long, plus a short preamble. *Id.* at ¶ 5; *see also* Feldman's verified Complaint dated June 1, 2006, attached hereto as Exhibit A, and the AdWords contract attached thereto. The contract is printed and displayed entirely in 12-point type. *Id.* Google makes it easy for the advertiser to read the entire contract on the screen, or, if he prefers, to print the contract and read it in paper form. Hsu Decl. ¶ 5.
- After Google presents the advertiser with the contract, the advertiser *must* click a button indicating that he assents to the contract in order to proceed. Hsu Decl. ¶ 6. If the advertiser does not assent to the contract, he can never activate his AdWords account, which means that he can never place any ads or incur any charges. *Id.*

Unsurprisingly, therefore, courts have consistently upheld Google's contracts, including their forum-selection clause. For example, in *Person v. Google, Inc.*, __ F. Supp. 2d __, 2006 WL 2884444 (S.D.N.Y., October 11, 2006), the Southern District of New York considered the same AdWords contract that is at issue here. The court held that the forum-selection clause in the contract is fundamentally fair and enforceable, and accordingly, ordered the case to be transferred from New York to San Jose, California, which is in Santa Clara County, the forum that the contract specifies. *Id.* at *3-*8. Likewise, in *Novak v. Overture Servs., Inc.*, 309 F. Supp. 2d 446 (E.D.N.Y. 2004), the court considered Google's contract for Google Groups, an on-line discussion group service, which is presented to users in a manner similar to how the AdWords contract is presented to advertisers. *See id.* at 451. Once again, the court held that the forum-selection clause in the contract is valid and enforceable, and accordingly, dismissed the relevant claims without prejudice to being renewed in an appropriate venue. *Id.* at 451-52. In contrast, *no* court has held that the AdWords or Google Groups contract is unenforceable, as plaintiff Feldman asks this court to do.

As set forth more fully in Google's opening brief and in oral argument, forum-selection clauses must be enforced unless "trial in the contractual forum will be so gravely difficult and inconvenient that the party seeking the non-contractual forum will for all practical purposes be deprived of his day in court." *Anastasi Bros. Corp. v. St. Paul Fire and Marine Ins. Co.*, 519 F. Supp. 862, 863 (E.D.Pa. 1981) (Giles, J.). Plaintiff Feldman is a sophisticated attorney. He can easily litigate in California--indeed, he chooses to do so on behalf of clients in other matters. He had ample opportunity to review the AdWords contract, which is short and easy to read, before he participated in the AdWords program. And he was *required* to assent to the contract, including its forum-selection clause, before he placed any ads or incurred any charges. Google respectfully requests the Court to grant Google's motion and dismiss this action without prejudice to its being renewed in the proper forum.

Respectfully submitted,

LINDY & ASSOCIATES, P.C.

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